

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL BARKARRI FOSTER,  
Plaintiff,  
v.  
BROWN, et al.,  
Defendants.

No. 2:24-cv-2979 DC SCR P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel, filed this civil rights action pursuant to 42 U.S.C. §1983. Before the court are plaintiff's complaint for screening as well as his motions to proceed in forma pauperis. For the reasons set forth below, the undersigned recommends that the complaint be dismissed without leave to amend. Based on this recommendation, the court denies plaintiff's motions to proceed in forma pauperis as moot.

**SCREENING**

**I. Legal Standards**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28

1 U.S.C. §1915A(b)(1) & (2).

2 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
 3 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9<sup>th</sup>  
 4 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
 5 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
 6 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
 7 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of  
 8 the Federal Rules of Civil Procedure “requires only ‘a short and plain statement of the claim  
 9 showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what  
 10 the . . . claim is and the grounds upon which it rests.’” Bell Atlantic Corp. v. Twombly, 550 U.S.  
 11 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

12 However, in order to survive dismissal for failure to state a claim a complaint must  
 13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
 14 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
 15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
 16 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
 17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
 18 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

## 19 II. Discussion

20 Plaintiff is incarcerated at the Salinas Valley State Prison. His complaint names four  
 21 defendants: three Judges of the Sacramento County Superior Court and a Sacramento County  
 22 Public Defender. Plaintiff alleges defendants failed to adequately represent him in criminal  
 23 proceedings in 2023 because they undermined his search for evidence.

24 Plaintiff’s complaint cannot survive screening because he has named defendants who are  
 25 either immune from suit or who are not subject to civil liability because they do not qualify as  
 26 state actors. The Supreme Court has held that judges acting within the course and scope of their  
 27 judicial duties are absolutely immune from liability for damages under § 1983. Pierson v. Ray,  
 28 386 U.S. 547 (1967). A judge is “subject to liability only when he has acted in the ‘clear absence

1 of all jurisdiction.’” Stump v. Sparkman, 435 U.S. 349, 356-7 (1978), quoting Bradley v. Fisher,  
2 13 Wall. 335, 351 (1872). A judge’s jurisdiction is quite broad. The two-part test of Stump v.  
3 Sparkman determines its scope:

4           The relevant cases demonstrates that the factors determining whether  
5           an act by a judge is a ‘judicial’ one relate to the nature of the act  
6           itself, i.e., whether it is a function normally performed by a judge and  
7           to the expectation of the parties, i.e., whether they dealt with the  
8           judge in his judicial capacity.

9 Id. at 361. The allegations in the complaint indicate that the defendant judges were acting within  
10 the scope of their judicial duties. Therefore, they are immune from civil liability.

11           Additionally, plaintiff’s Public Defender is not a state actor within the meaning of §1983.  
12 See Polk County v. Dodson, 454 U.S. 312, 318-19 (1981) (public defenders do not act under  
13 color of state law for purposes of §1983 when performing a lawyer’s traditional functions); Rivera  
14 v. Cty. of Los Angeles, 745 F.3d 384, 391 n.3 (9th Cir. 2014). Therefore, the complaint does not  
15 state a claim for relief against any proper defendant. The undersigned recommends dismissing  
16 plaintiff’s complaint. See 28 U.S.C. § 1915A(b). Because permitting plaintiff to amend the  
17 complaint would be futile, this court further recommends that the complaint be dismissed without  
18 leave to amend. See Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276,  
19 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not  
20 have to allow futile amendments).

21           For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff’s motions for leave to  
22 proceed in forma pauperis (ECF No. 2, 7) are denied as moot.

23           IT IS FURTHER RECOMMENDED that plaintiff’s complaint be dismissed without leave  
24 to amend.

25           These findings and recommendations are submitted to the United States District Judge  
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days  
27 after being served with these findings and recommendations, any party may file written  
28 objections with the court and serve a copy on all parties. Such a document should be captioned  
“Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
objections shall be filed and served within fourteen days after service of the objections. The

1 parties are advised that failure to file objections within the specified time may waive the right to  
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: May 2, 2025

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SEAN C. RIORDAN  
UNITED STATES MAGISTRATE JUDGE